IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.735 OF 2006

Anandrao Bhavdu Bachhav ...Appellant

Vs.

Ramkrushna Govind Patil ...Respondent

Mr.M.M.Sathaye for the Appellant
Mr.Anilkumar Patil for the Respondent.

CORAM: A.S.OKA, J.
DATED: AUGUST 3,2006.

P.C.:

1. The submissions of the Advocates appearing for the parties were heard yesterday. The Appeal is by the original Defendant. The Trial Court decreed the suit filed by the Respondent and the decree has been confirmed in Appeal. The decree passed by the Trial Court is for declaration that the Release Deed dated 6th April 1987 allegedly executed by the Respondent in favour of the Appellant was void. The decree is for injunction restraining the Appellant from causing obstruction in peaceful possession of the Respondent over the suit agricultural land.

2. The subject matter of the suit filed by the Respondent are agricultural lands. One Govind Patil and one Bhavdu Bachhav were cousins. The Appellant and the Respondent are the sons of Govind. After the demise of Bhavdu the Appellant

was given in adoption to Goutamabai the widow of Bhavdu Bacchav and his name was changed to Ananda. According to the case of the Appellant, the said Govind executed a registered will in favour of the Appellant in respect of the suit property. According to the case of the Appellant there were many litigations between the parties and it was decided to settle the dispute between the parties and therefore, on 6th April 1987 the Respondent executed a registered deed of release in favour of the Appellant by which the Respondent relinquished his right,title and interest in the suit property in favour of the Appellant. According to the case of the Appellant, he paid consideration of Rs.20,000/- to the Respondent. On the basis of the settlement and execution of the deed of release, the Appellant filed a pursis in a pending Appeal in the District Court and withdrew the Appeal.

3. The present suit was filed by the Respondent contending that after the Appellant was adopted by the widow of the deceased Bhavdu in the year 1957, the Appellant ceased to have any connection with the family of his natural father Govind. The said Govind purchased the suit land in proceedings under section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948. According to the Respondent, he being the only son of Govind acquired the property under section 40 of the said Act of 1948. According to the Respondent the document of release deed is bogus and

fabricated. The Trial court accepted the case made out by the Respondent and the decree passed by the Trial Court has been confirmed by the Appellate Court.

4. Shri Sathaye, learned Counsel for the Appellant submitted that there was a presumption in favour of the deed of release as the same was duly registered. He submitted that the mere absence of consideration will not make the deed of release a void document. He submitted that apart from presumption in favour of the registered document, there was an opinion of handwriting expert which ought to have been discarded. He submitted that the execution of the release deed was established by the attesting witness.

5. I have considered the submissions. The Appellate Court found that a specific case was made out by the Appellant that the deed of release was executed for consideration of Rs.20,000/-. In fact, the document does not refer to any such consideration. The Courts below have found that there was no evidence about the payment of Rs.20,000/- by the Appellant to the Respondent. The Appellate Court also noted that the Appellant filed a pursis in pending Civil Appeal No.155 of 1986 stating therein that in view of the deed of release executed by the Respondent, he was desirous of withdrawing the Appeal. The Appellate Court found that to the said pursis a reply was filed by the respondent denying

to have received any amount from the Appellant and denying execution of the alleged deed of release. Immediately thereafter, the Respondent filed a criminal case on the allegation that the document of release deed is fabricated. The Appellate Court also held that the alleged attesting witness to the release deed did not depose about the payment of Rs.20,000/- by the Appellant to the Respondent when it was the specific case of the Appellant that he paid the said amount at the time of execution of the alleged release deed. Apart from this factual aspect, the Appellate Court has held that the execution of the deed of release was hit by Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948.

6. So far as execution of the will is concerned, the Appellate Court after perusal of the evidence of the attesting witness Murlidhar Bachhav came to the conclusion that his evidence does not inspire confidence. The Appellate Court recorded a finding of fact that even in earlier suit between the parties filed in the year 1981, the Appellant did not rely upon the alleged will dated 22nd April 1972. In view of the evidence on record, the Appellate Court held that the execution of the will was not established.

7. If these are the findings of fact recorded by the Courts below and especially by the Appellate Court, no interference is called for in the Second Appeal under Section 100 of the

Code of Civil Procedure, 1908. There is no merit in the Appeal and the same is dismissed with no order as to costs.

Judge.